



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **30.09.2021**

CORAM

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P. (MD)No.7251 of 2015

WEB COPY

1.Jeya Raj

2.Sarala

3.Jayakumar

... Petitioners

Vs.

1.The State of Tamil Nadu,
Rep. by the Commissioner and Secretary to Government,
Department of Forest and Fisheries Department,
Fort St. George,
Chennai - 09.

2.The District Collector,
Kanyakumari District,
Kanyakumari.

3.The District Forest Officer,
Kanyakumari Division,
Nagercoil.

... Respondents

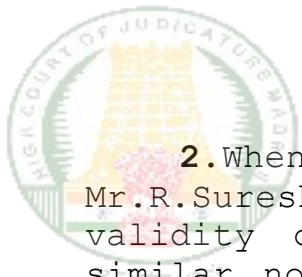
Prayer: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorari, calling for the entire records pertaining to the Impugned Notification of the 2nd Respondent published in Kanyakumari District Gazette dated 31.07.1980 declaring the property of the Petitioner as a Private Forest in Re-Survey No.259/2 of Schurulacode village (Formerly 2961 A2 of Ponmanai Village), Kalkulam Taluk, Kanyakumari District in an extent of 6 hectares and 28 Ares (15 Acres and 52 cents) land and quash the same as illegal.

For Petitioners : Mr.M.Naraayanaswamy

For Respondents : Mr.R.Sureshkumar,
Government Advocate

O R D E R

The petitioner has challenged the notification issued by the second respondent published in Kanyakumari District Government Gazette dated 31.07.1980, declaring the property of the petitioner as a Private Forest in Re-Survey No.259/2 of Schurulacode Village (Formerly 2961 A 2 of Ponmanai Village), Kalkulam Taluk, Kanyakumari District in an extent of 6 hectares and 28 Ares (15 Acres and 52 cents) land and to quash the same.



2. When this writ petition was taken up for final hearing, Mr. R. Suresh Kumar, learned Government Advocate submitted that the validity of the very same notification along with some other similar notifications extending the provisions of the Act called "The Tamil Nadu Preservation of Private Forests Act, 1949" to the Kanyakumari District having been considered was upheld by a Division Bench of this Court and in this context, he has relied upon the judgment of the Division Bench of this Court in the matter of **Kanyakumari District Planters Association Vs. State of Tamil Nadu by Commissioner & Secretary to Government, Forest and Fisheries Department and others** reported in (2016) 2 LW 289 (DB) : (2016) 2 Mad LJ 513. In the said judgment, the following paragraphs have been relied upon by the learned Government Advocate:

"6. By notification dated 31.07.1980, the District Collector in exercise of his powers under section 1(2) (iii) of the Act (extended to Kanyakumari District by Act 28 of 1979) declared the appellants' lands to be private Forests. Similar notification dated 16.02.1982, was issued in respect of other lands, declaring them as 'Private Forests'. These notifications were impugned in the writ petitions.

7. to 21.

22. As mentioned above, the provisions of the Act were extended to Kanyakumari District by Act 28 of 1978 with effect from 15.06.1979 and the first notification was issued by the District Collector on 14.10.1979. This notification was not subject matter of challenge. The second notification was issued on 31.07.1980 and the third on 16.02.1982 and these notifications were put to challenge. Both the impugned notifications were issued by the District Collector declaring certain lands to be Forest under the Private Forest Act in terms of Section 1(2)(iii) of the Act. The notification mentions the name of the village, the re-survey number, extent of the property, classification, name of the owner and remarks. The lands have been shown as Private Forest (Rubber Estate). In terms of the notification, the lands have been classified as patta land and there is no dispute to the said fact.

23. to 42.

43. So far as 1949 Act, is concerned, it is



admittedly, not a prohibitive statute, but a statute intended to regulate and preserve private Forest. The proprietary rights of the landowners over the property has not been divested. For the purposes of carrying out the provisions of the Act in terms of Section 2A, a Committee has been constituted at District Level. Explanation under Section 3(1) would be relevant which states that nothing in the said sub-section shall be construed as preventing owner from selling or otherwise dealing with a right to gather and remove forest produce other than the tree, timber and reeds in the usual customary manner for the period not exceeding two years. Similarly, sub-section(2), also provides for permission to be obtained from the committee to carry out certain activities.

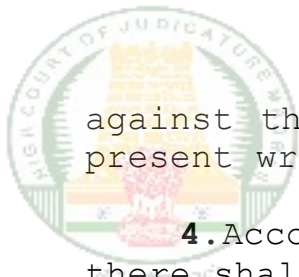
44. Thus, in the absence of any absolute prohibition and when certain transactions are allowed to be sanctioned by the committee, restriction can be viewed as reasonable where the provisions for the grant of permission is sought to be enforced bearing in mind the public interest involved i.e., to say preventing the indiscriminate destruction of private forest.

45. to 50.

51. In our view, so far as the extension of the 1949 Act to the Kanyakumari District erstwhile Travancore-Cochin State. This appears to have resulted in a unique problem for this area namely, Kanyakumari District and it is all the more essential that the provisions of the Act should be strictly enforced in Kanyakumari District to preserve the environment and maintain the ecological balance.

52. For all the above reasons, we find no grounds to interfere with the order passed in the writ petitions and accordingly, the Writ Appeals fail and they are dismissed. Consequently, Writ Petitions are also dismissed, leaving it open to the parties to work out their rights under the provisions of the Act. No costs. Consequently, connected Miscellaneous Petitions are closed."

3. On perusal of the said judgment of the Division Bench cited supra, where since the Court has upheld the notification along with similar notifications which were under challenge, this Court finds that the petitioner cannot have any effective challenge



against the impugned notification. Therefore, on that ground, the present writ petition fails. Hence, it is liable to be dismissed.

4. Accordingly, the Writ Petition stands dismissed. However, there shall be no order as to costs.

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Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

btr/MR

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The Commissioner and Secretary to Government,
The State of Tamil Nadu,
Department of Forest and Fisheries Department,
Fort St. George,
Chennai - 09.

2.The District Collector,
Kanyakumari District,
Kanyakumari.

3.The District Forest Officer,
Kanyakumari Division,
Nagercoil.

+1 CC to M/s.SPL.GP (SR-30861[F] dated 01/10/2021)

W. P. (MD) No. 7251 of 2015

Dated:

30.09.2021

RK (25/10/2021) 4P 5C